

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

TRACY ALLEN UTPADEL
TX-1329029-R

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DOCKETED COMPLAINT NO.
07-130 & 08-028

AGREED FINAL ORDER

On this the 17th day of OCTOBER, 2008, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Tracy Allen Utpadel (Respondent).

In order to conclude this matter, Tracy Allen Utpadel neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order. The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent Tracy Allen Utpadel is a Texas certified residential real estate appraiser, holds certification number TX-1329029-R, and was certified by the Board during all times material to the above-noted complaint case.
2. On or about February 1st, 2006, Respondent appraised real property located at 708 Hinsdale Drive, Arlington, Texas 76006 ("the Hinsdale property"). On or about November 9th, 2006, Respondent appraised real property located at 301 Windy Hill Lane, Fort Worth, Texas 76108 ("the Windy property").
3. On or about October 17th, 2007, Mark Loftus filed a staff-initiated complaint with the Board. The complaint alleged that the Windy property appraisal report contained violations of the Uniform Standards of Professional Appraisal Practice ("USPAP"). On or about May 21st, 2007, Deloris L. Kraft-Longoria filed a staff-initiated complaint with the Board. The complaint was based upon information submitted by the Texas Real Estate Commission and alleged Respondent had given a false upgrade appraisal for the Hinsdale property.
4. On or about June 6th, 2007 and October 25th, 2007, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103, notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in each of the complaints. Respondent's response to each complaint was received.

5. Respondent violated TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal reports for the Windy and Hinsdale properties:

- a) Respondent failed to comply with the record keeping provisions of USPAP's Ethics Rule;
- b) Respondent failed to identify, describe and report the site and improvements descriptions for the Windy and Hinsdale properties adequately;
- c) Respondent failed to support the analysis of economic supply and demand, and market area trends that were described in the Hinsdale report;
- d) Respondent failed to provide a summary of his rationale for his determination of the Windy and Hinsdale properties' highest and best use;
- e) Respondent failed to use an appropriate method or technique to develop an analysis of land sales or values, and failed to collect, verify, analyze and reconcile the cost new of improvements, and accrued depreciation in his Windy property appraisal;
- f) Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately and failed to employ recognized methods and techniques correctly in his sales comparison approaches for the Windy and Hinsdale properties;
- g) Respondent failed to analyze and report the contract of sale for the Hinsdale property; and,
- h) Respondent produced misleading appraisal reports for the Windy and Hinsdale properties that contained errors of omission or commission that significantly affected the appraisals and were the result of careless or negligent appraisal services.

CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq.

2. Respondent violated the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Ethics Rule (record keeping provisions) USPAP Standards Rules: 1-2(e)(i) & 2-2(b)(iii); 1-3(a) & 2-2(b)(ix); 1-3(b) & 2-2(b)(x); 1-4(b)(i) & 2-2(b)(viii); 1-4(b)(ii) & 2-2(b)(viii); 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(ix); 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-5(a) & 2-2(b)(ix); 1-1(b); 1-1(c), and 2-1(a).

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent:

- a. Shall attend and complete a minimum, 15 classroom-hour course in USPAP;
- b. Shall attend and complete a minimum, 15 classroom-hour course in Residential Report Writing;
- c. Shall attend and complete a minimum, 15 classroom-hour course in Residential Case Studies; and,
- d. Shall comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

ALL CLASSES required by this Agreed Final Order must be classes approved by the Board and must be completed within **TWELVE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements of this Order shall be delivered to the Board on or before the end of the twelve-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. Unless otherwise noted above, all classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for certification.

Failure to timely comply with any of the terms of this Final Agreed Order shall result in initiation of a contested case proceeding against Respondent and after opportunity for a hearing, possible imposition of disciplinary sanctions against Respondent as provided for by TEX. OCC. CODE § 1103.518.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

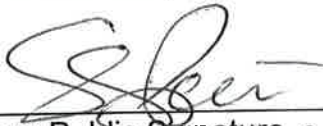
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 05 day of OCTober, 2008.



TRACY ALLEN UTPADEL

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 5 day of October, 2008, by TRACY ALLEN UTPADEL, to certify which, witness my hand and official seal.

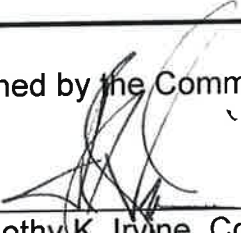


Notary Public Signature
Selena Y. Pena

Notary Public's Printed Name



Signed by the Commissioner this 17th day of OCTOBER, 2008.



Timothy K. Irvine, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 17th day of OCTOBER, 2008.



Clinton P. Sayers, Chairperson
Texas Appraiser Licensing and Certification Board